



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Broadstreet Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT

Introduction

This hearing was scheduled for 1:30 p.m. on this date, via teleconference call, to deal with the tenant's application for return of the security deposit and compensation for damages or loss under the Act, regulations or tenancy agreement: namely loss of quiet enjoyment.

The landlord's agent appeared at the hearing and confirmed receipt of the tenant's proceeding package. The tenant did not appear at the hearing despite leaving the teleconference call open for at least 15 minutes to give the tenant the opportunity to appear.

Since the tenant did not appear and the landlord's agent appeared and was prepared to proceed, I dismissed the tenant's claim for compensation for damages or loss without leave to reapply.

As for the tenant's request for return of the security deposit, I found that request premature and the tenant was not in a position to request a refund when she filed on January 20, 2020 for the reasons that follow.

A landlord has 15 days from the date it receives the tenant's forwarding address in writing, or the tenancy ended, whichever date is later, to either refund the deposit to the tenant, file a Landlord's Application for Dispute Resolution to make a claim against it, or get the tenant's written consent to retain the deposit. The landlord's agent stated that she did not have a record of the landlord receiving a forwarding address from the tenant, in writing, before receiving the tenant's proceeding package.

I noted that the tenant had uploaded an image of an email she sent to another one of the landlord's agents on January 15, 2020 and in that email is a forwarding address.

However, section 88 of the Act provides for all of the ways a document is to be given and section 88 does not recognize email as an acceptable way to give a document. Starting March 30, 2020, the Director authorized service by way of email due to the COVID-19 pandemic; however, on January 15, 2020 email was not an acceptable method of giving a document. Even if the landlord did receive the email of January 15, 2020, the tenant requested return of the deposit only five days later when she made the Application for Dispute Resolution on January 20, 2020. Therefore, I find the tenant was premature in seeking return of her security deposit by way of the Application for Dispute Resolution she made on January 20, 2020 and her request for return of the security deposit is dismissed with leave to reapply.

During the hearing, I confirmed that the landlord has the tenant's service address that appears on the tenant's Application for Dispute Resolution and it is the same as the forwarding address appearing in the email uploaded by the tenant. Therefore, **I put the landlord's agent on notice that as of the date of this hearing, the landlord is considered to be in receipt of a written forwarding address for the tenant, and the landlord must take action to dispose of the tenant's security deposit in a manner that complies with section 38(1) of the Act and within 15 days of today's date. The landlord's failure to do so shall entitle the tenant to make another Application for Dispute Resolution and request doubling of the security deposit.**

Conclusion

The tenant's claim for return of the security deposit was premature and her request is dismissed with leave to reapply.

The landlord has 15 days from today's date to either: refund the security deposit to the tenant; make a Landlord's Application for Dispute Resolution to make a claim against the security deposit; or, get the tenant's written authorization to retain the deposit. Failure to do so shall entitle the tenant to make another Application for Dispute Resolution and request doubling of the security deposit.

The tenant's claim for compensation for damages or loss is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 11, 2020

Residential Tenancy Branch